

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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<b>HOFFMASTER GROUP, INC.,</b>	)	
	)	
<b>Respondent,</b>	)	
	)	
<b>And</b>	)	<b>Case No. 18-CA-132923</b>
	)	
<b>UNITED STEELWORKERS LOCAL 2-169.</b>	)	
	)	
	)	
<b>Charging Party.</b>	)	

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**RESPONDENT HOFFMASTER GROUP, INC.'S MOTION FOR SUMMARY  
JUDGMENT**

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PLEASE TAKE NOTICE that Respondent, Hoffmaster Group, Inc. ("Hoffmaster"), by its attorneys, Simandl Law Group, S.C., by Robert J. Simandl and Stefanie Carton, hereby moves the National Labor Relations Board ("Board") for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Board Rules and Regulations §§ 102.24, 102.35 and 102.50, on the grounds that there is no genuine issue as to any material fact to sustain Subregion 30's Complaint against Hoffmaster and judgment as a matter of law in favor of Hoffmaster is appropriate. Filed herewith is Hoffmaster's Memorandum of Law in Support of Summary Judgment and the Affidavits of David Vierthaler, Patrick Frees, Marie Roubal and Mary Beth Mazzocchi.

On July 17, 2014, the United Steelworkers Local 2-169 ("Union") filed an unfair labor practice charge alleging that Hoffmaster violated Section 8(a)(1) of the National Labor Relations Act ("Act") when it refused to supply the Union with the names of employees selected on a monthly basis by third party health care provider, ThedaCare At Work ("ThedaCare"), for random drug testing pursuant to the Drug and Alcohol Policy contained in the Parties' Collective

Bargaining Agreement. Hoffmaster refused to supply the Union with the requested names due to the confidentiality requirements placed on Hoffmaster as a business associate of ThedaCare, pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) regulations. Hoffmaster did, however, obtain on more than one occasion – and produce for the Union – confirmation from ThedaCare that the manner in which the employees are selected for random drug and alcohol testing is by way of computer software for random selection, with all employees having an equal chance at being selected. On September 29, 2014, Subregion 30 issued a Complaint against Hoffmaster alleging that Hoffmaster violated Sections 8(a)(1) and (5) of the Act when it failed or refused to provide the Union with the requested information.

As set forth in the accompanying Memorandum in Support of Respondent’s Motion for Summary Judgment, the Subregion’s Complaint fails as a matter of law because: (1) the information requested by the Union is not relevant to the Union’s representational duties; (2) Hoffmaster’s legitimate and substantial reason for failing to produce the requested information, its duty to maintain the confidentiality of protected health information under HIPAA, outweighs the Union’s interest in obtaining the requested information; (3) Hoffmaster fulfilled its obligation to accommodate the Union’s request by supplying the Union with confirmation from ThedaCare that the employee selection process is in fact random; and (4) the Union’s information request has been rendered moot due to ThedaCare’s revision of the random drug testing process whereby Hoffmaster will no longer obtain the names of individuals randomly selected for testing and both the Union and Hoffmaster may obtain the identity of the monthly selection of employees only by way of signed authorizations from employees. Thus, Hoffmaster cannot be found as a matter of law to have violated Sections 8(a)(1) and (5) of the Act in failing or refusing to provide the requested information. Accordingly, Hoffmaster respectfully requests that the

Board grant summary judgment in favor of Hoffmaster, dismissing Subregion 30's Complaint in its entirety.

Dated: November 18, 2014

Respectfully submitted,

**Hoffmaster Group, Inc.**

By: 

One of Its Attorneys

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